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10/542,443	07/15/2005	Fabrice Bonacci	Q89061	2712
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2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800				
WASHINGTON, DC 20037				
EXAMINER				
BLATT, ERIC D				
ART UNIT		PAPER NUMBER		
3734				
NOTIFICATION DATE		DELIVERY MODE		
03/15/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/542,443

Applicant(s)

BONACCI, FABRICE

Examiner

Eric Blatt

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8, 9 and 11-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9 and 11-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8, 9, and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Windheuser et al. (US 6,606,515) in view of Allen (US 379,553).

Windheuser discloses a guide insertion device (Figure 16) comprising a body 600 delimiting a duct that is capable of guiding a guide. The duct is open at its two ends. The body comprises a slim cannula extending along the axis of the duct and capable of being engaged through a check valve. The body has a slot 612 extending longitudinally along the length of the duct from one end of the duct to the other and opening into the duct along its whole length. The diameter of the duct increases progressively from the first end to the second end. With regard to the claimed shape, the guide insertion device shown in Windheuser does not appear to be frustoconical or flare progressively from the first end of the duct. Allen teaches a structurally similar device having a taper and a slot which allows insertion of an instrument into a relatively smaller space. Though the purpose of the Allen device is not identical to that of the Windheuser device, one skilled in the art would recognize that the tapered shape of the Allen device would be relevant to the Windheuser application. It would have been

Art Unit: 3734

obvious to one of ordinary skill in the art at the time of the invention to modify the Windheuser body 600 such that it is frustoconical and flares toward its first end since Allen teaches such a shape and this modification would not have produced unexpected results. Further, the flared end would allow a broader space to insert the guide.

With regard to the claimed size of the duct, it would have been obvious to one of ordinary skill in the art to size the duct such that its minimal diameter lies between 1.5 and 2.5 mm since it has been held that where the general conditions of a claim are known, it is within the knowledge of one skilled in the art to determine a workable range for operation of the device.

The body is formed of a single monobloc piece. The cannula extends over a length greater than 50% of the total length of the duct. The flared portion at the end of the modified device is considered to comprise a divergent frustoconical wall that axially extends the cannula.

Regarding claim 6, the frustoconical wall of the modified device internally delimits a centering cone. It would have been obvious to one of ordinary skill in the art at the time of the invention to have the maximal diameter of the centering cone lie between 1.5 and five times its minimal diameter, or between 3 and 8 times the minimal diameter of the duct, since it has been held that it is within the knowledge of one of ordinary skill in the art to determine an optimal range for the functionality of a device.

Regarding claims 8, 9, 11, 12 and 13, it would have been obvious to one of ordinary skill in the art to modify the apparatus of Windheuser by providing the elements such that they have the dimensions as claimed since it has been held that it is within the

knowledge of one of ordinary skill in the art to determine an optimal range for the functionality of a device.

Regarding claim 14, Windheuser teaches providing internal bevels along the inner surface of a slot 710, 716.

Response to Arguments

Applicant's arguments with respect to claims 1-6, 8, 9, and 11-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is (571)272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Art Unit: 3734

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric Blatt/
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734